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12-2-1144

OGC HAS REVIEWED.

4 March 1949

MEMORANDUM FOR: DEPUTY DIRECTOR

SUBJECT: CIA Relationship with Employees of other Governmental Agencies

REFERENCES: (a) Memorandum dated 28 February 1949, to General Counsel from Acting Executive for Administration and Training, OPC, Subject: "Agent Relationship with Employees of Other Governmental Departments and Agencies"

1. Reference (a) grew out of a series of conversations with various OPC and OSO officers in which it became apparent that there is considerable misunderstanding or doubt concerning what may or what may not be done under the Director's oral ruling concerning arrangements for the services of employees of other government agencies. Several aspects have appeared since the original cases were presented which were not then contemplated and on which there appears to be no policy guidance.

2. In order that uniform and clear policies will be available to OSO and OPC, we concur in OPC's feelings that further clarification in detail would be helpful to us all. The recommendations of this office are stated below:

a. The nature of the agreement - We feel it matters little what the agreement is called or what form it takes, as the documents never leave our covert files and no copies are given to the individuals with whom we contract. We do believe the matter of handling and the authority to sign agreements is very important. At present, all headquarters agent contracts must be cleared with this office as to legal sufficiency. (Field contracts follow general guides set by headquarters but are, by necessity, subject only to loose supervision and audit.) Our attempt is to set down in writing a complete understanding of the parties of their mutual rights and obligations within the limits of properly approved projects and the policies laid down by the Director. But

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for the necessity of this clearance in our office, the whole subject here discussed probably would not have been brought up until after many arrangements and been entered into. This is no reflection on the case or the administrative officers of OSO and OPC, inasmuch as it is our job to keep informed of the laws, regulations and policies of which they have no reason to be aware. Once initialed by us, the agent contracts can be signed only by the Budget Officer or his [redacted] Deputy. This system has, we believe, worked well on covert contracts up to date. If contracts are ruled out, it might be interpreted that memoranda of understanding, to be substituted therefore, could be entered into between the individual and the case officer or the branch chief handling the project. We feel that such an interpretation would lead to endless confusion and would not insure protection to which both the Director and the Assistant Director are entitled. We recommend, therefore, that the contract system and general form be followed, although it may be well to have a special name, such as Special Consultant's Agreement, for this particular type of case.

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b. Content of Agreement - We will take up the items of compensation in reference (a) and discuss them separately. Some we think were clearly authorized in the Director's original decision, but certain others are new in concept and require specific rulings.

(1) Reimbursement for out-of-pocket expenses. We believe there is little question about making this a standard provision in all agreements. We can think of no criticism that could be made for reimbursement to an individual for expenses which have been incurred at our request. These would be, normally, such items as travel at our request, purchase of goods and materials on our order, and payment of services and individuals approved by us. Such expenses will be fully accountable in accordance with standard CIA regulations.

(2) Representation allowance. This was not specifically raised at the time the Director made his original ruling. We feel there may be situations where we shall want the employee of another agency, who will do work in his spare time for us, to live in a style or manner exceeding the normal salary and allowance for operational purposes connected with entertainment or covert contacts. Under such circumstances, it would not

be difficult to establish the normal rents and costs of living for his position, and to decide how much extra he should be allowed per month, per quarter, or per year, to increase his manner of living. The accounting would be a statement, semi-annually or annually, of the actual increase in rents, increased servant's wages, and other authorized expenses in connection with his manner of living. We see no criticism of such a representation allowance, if justified by operational necessity. But in accordance with general CIA and governmental policies in regard to representation allowances, we feel they should be strictly controlled and granted with great reserve, so that probably approval should be the specific responsibility of the Assistant Director concerned.

(3) Entertainment allowance. We feel there is little question that entertainment allowances will be a standard provision of the agreements. Entertainment of foreign officials and other non-U. S. government officials for official purposes is recognized by the Congress and the Comptroller General. It can be easily controlled and would be in the project under which the agreement would be made. These expenses are strictly accountable in accordance with the normal CIA regulations.

(4) Providing automobile under appropriate circumstances. We see no objection to the provision of a government car to the employee, registered in his name under deed of trust to us, in the manner in which OSO has already established. Again, there must be valid operational justification and strict control, so it is our feeling that approval should rest solely in the Assistant Director concerned.

(5) & (6) Compensation for overtime and lump-sum payments. These are new in concept and were not raised at the time the Director made his original ruling. We take them together since, in our opinion, there is but one manner in which actual compensation has support in law and which is a combination of these two ideas. When the question first came up, without ample time to study the authorities, we felt that Sections 58 and 69 of Title 5,

U. S. Code, were specific and clear in their language. Section 60 appears to forbid any payments to an employee of the Government for additional services even though they are services not required of him by his position. Section 58 forbids the holding of two positions for which the combined salary is more than $3,000. There is a long history of court decisions, opinions of the Attorney General and of the Comptroller General, which interpret these two Sections. What, in our opinion, they boil down to is that the evil to be prevented by these two Sections is one man getting several titles and several salaries or performing outside work to the detriment of his proper work. In interpreting Section 69 the various Decisions, while somewhat confused, seem to agree that if the work is performed outside and apart from the work of his normal job and is inconsistent with his normal duties (i.e., something that his normal duties could never require him to perform), and if the payment is made in the nature of a fee for such outside work, then the individual is entitled to payment despite Section 60. The same argument appears to have been applied to Section 58. That if the work were done outside his normal duties and position on an intermittent or fee basis for which no regular hourly or annual rate was fixed, then the individual would not be considered to be holding two positions within the meaning of Section 58. If, therefore, it was clearly understood in the agreement that the individual employed by another agency should report those days on which he performed work solely for CIA outside his normal duties, and such work was not of a nature which his normal duties would require, and that for each such day he would be paid a flat fee, we do not believe the agreement would be legally subject to criticism. A parallel is found in a recent Comptroller General Decision. The state of retirement (as of a retired officer) is considered an office or a position in the meaning of Section 58. Therefore, if a retired officer is employed in a civilian capacity, he must lose his retirement benefits for the duration of such employment. This is true even if appointed

as a consultant or expert on an hourly basis. If, however, he is employed solely as an intermittent expert or consultant on a fee basis, he need not relinquish his retirement benefits while receiving the fees. This last situation seems to be comparable to the arrangement we have suggested above, so that if it were approved as a policy, we do not feel it would be subject to serious criticism from a legal point of view. This suggestion is offered in place of the theories of compensation for over-time and lump-sum payments made in reference (a).

c. Commitments Concerning Future Employment - We believe it is clearly understood that the Director's original ruling banned any formal commitments on behalf of CIA concerning future employment by CIA upon termination of this employment by the other government agency. We did understand that it would not be ruled for the Assistant Directors concerned to give assurance concerning the consideration that would be given to the individual in the event of such termination. It was our understanding that this assurance did not go to the extent of implying definite financial assistance, although we see no objection from a legal point of view to such a commitment. Since the ruling is not clear, we recommend that a specific policy directive be given as to how far such a collateral declaration of intent by the Assistant Director concerned could go.

3. From the manner in which we have been approached on this whole subject by representatives from both OPC and OSO, we feel they are endeavoring to comply with the Director's original ruling but are, like ourselves, in doubt as to some of the limitations. Upon clarification, we shall take steps to see that the policies are reflected in the covert administrative issuances which are under consideration by an informal board on which this office is represented. If further discussion is in order, we note that Mr. Green requests an opportunity to be present.

/s/

LAWRENCE R. HOUSTON
General Counsel

LRH:mll

cc: Chrono
Subject
Legal Decisions